

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is a fifty-two-year-old man who has been disabled by quadriplegia for twenty-seven years. He receives federal Medicare and is also assisted by the Vermont Medicaid program through a home and community-based waiver of the long-term Medicaid program. Under this program, the petitioner, instead of living in a nursing home or similar facility, receives extensive caretaker supports in order to enable him to live in his own home. He is, however, treated financially as if he were in long-term care and as such is responsible to pay a "patient share" towards his medical expenses each month.

2. Prior to October of 2001, PATH established a patient share amount of \$307 per month due to a mistake by the Department in calculating the amount of the petitioner's earned income and a mistake in giving him a deduction for his previous month's patient share as a medical expense. When the mistake was discovered, PATH notified the petitioner that his patient share would increase as of November 1, 2001 to \$622.09 per month. The petitioner appealed the assessment of that new amount and provided the Department with additional evidence of items he felt should be used to reduce the patient share amount.

3. PATH calculated the patient share for the petitioner by taking certain deductions from his unearned and earned income. The petitioner has unearned income from Social Security benefits from which the Department disregarded \$20. He also has income from employment of \$743.90 per month. The Department subjected that income to a \$65.00 disregard and the remainder to a 50 percent disregard for a total of \$339.45 in countable earned income. When added to the countable unearned income. The petitioner's income was \$1,755.45 per month. The petitioner does not dispute the calculation of his applied income.

4. PATH took certain deductions from this applied income to determine the patient's share. The parties both agreed from the start that the petitioner would receive a community maintenance allowance deduction of \$816 per month and a \$54 per month medical expense deduction based on the petitioner's Medicare premium. The petitioner was told he would also receive deductions for any other uncovered medical expenses that the petitioner could verify.

5. The petitioner presented credible and well-documented information to the Department that he has a number of expenses that he considers medically related each month. He verified that he incurs \$546.85 in over the counter medical expenses that are not covered by Medicare or Medicaid. He also verified that he has expenses of over \$500 per season for plowing, \$840 per season for lawn mowing and about \$375 per season for shoveling and maintenance of his wheelchair ramp, emergency exit, walks and roof. The petitioner's physician verified that these expenses are essential to getting his wheelchair out of the house, down the ramp, across the lawn and to the driveway where his handicapped van is parked. The petitioner uses the van to go to work and to get around which his physician considers "of benefit in his general health as well as his psychological well being". According to the

Department, the petitioner has also asked for a deduction of \$150 per month for payments made to his sister for "secretarial and household services" which includes photo copying, filing, writing payments, banking, postage, garbage disposal and recycling.

6. PATH reviewed the submissions of the petitioner and decided to give him a deduction for all of his over-the-counter medical expenses in the amount of \$545.85 per month. It declined to give deductions for the mowing, plowing, shoveling and secretarial and household services saying that they are not medical in nature and are the kinds of items that are already included in the \$816 community maintenance allowance. From the applied income of \$1,755.45, PATH deducted the standardized \$816 per month for personal needs, \$54 for the Medicare insurance premium, and \$546.85 for over the counter medications. The patient share was recalculated as \$338.60 per month.

ORDER

The decision of PATH is affirmed with regard to denial of deductions for lawn mowing and snow removal services and reversed with regard to its denial of deductions relating to money management and housekeeping services essential to the

petitioner's comfort and health. The matter should be remanded for a new calculation of the patient share based on the correct deduction of these expenditures.

REASONS

The petitioner is a participant in the Medicaid "home and community based waiver program" which is a program adopted by the Department several years ago to allow persons who would otherwise live in a long-term care facility, to live in their own homes with substantial medical supports. P-2420H. Persons who have "waivers" are considered "long-term care individuals" under the regulations even though they do not live in long-term care facilities. P-2430A. As long-term care individuals, they are liable to pay part of their medical expenses each month, an amount known as a "patient share".

M415. The patient share for "waivered" individuals is

calculated by . . . deducting all the following that apply from the waived individual's total monthly income:

1. A Community Maintenance Allowance (CMA) equal to the Protected Income Level (PIL) for 2 in Chittenden County. The CMA is used for all participants in the waiver programs whether they live inside or outside Chittenden County.
2. An allocation to the community spouse, if any, in accordance with M413.21 and P-2430E.

3. An allocation to other family members, if any, in accordance with M413.22 and P-2430E.
4. The individual's Medicare and/or other health insurance premiums (see M431).
5. Non-covered medical expenses (see M432).
6. Covered medical expenses that exceed limitations on amount, duration or scope of services covered (see M423).

The income remaining after the deductions listed above is the amount available to be applied to the cost of waived services (i.e. the "patient share"). . .

P-2430 H3

The petitioner has been granted a full deduction for all of his over-the-counter medications (\$546.85) by the Department and also for his Medicare premium of \$54 per month. (He does not have a spouse or other dependents living with him and so is not eligible for those deductions.) He has also been granted a "Community Maintenance Allowance" of \$816. Under the regulations, the petitioner can obtain such an allowance only for the months after January 1, 2002. For November and December of 2001 (which are also at issue in this case), the amount to be deducted is \$791. P-2420D(10).

The remaining issue is whether the petitioner can also have expenses for lawn mowing, snow removal, recycling and garbage disposal deducted from his income. Under the above procedures, these items can only be deducted if they are a

"medical expense" not covered by Medicaid. The Department uses the same description of a deductible medical expense in determining "patient share" that it uses in determining spend-down deductions (used to determine Medicaid eligibility for those who are over-income but have high medical expenses):

Medical Expenses not Covered by Medicaid

A deduction from excess income is allowed for necessary medical and remedial expenses recognized by state law but not covered by Medicaid in the absence of an exception for Medicaid coverage under M108, even after the Medicaid group has met a spenddown requirement. In determining whether a medical expense meets these criteria, the commissioner may require a Medicaid group to submit medical or other related information to verify that the service or item for which the expense was incurred was medically necessary and was a medical or remedial expense. The patient's physician shall verify medical necessity with a written statement or prescription specifying the need, quantity, and time period covered. These medical expenses, when not covered by Medicaid, include but are not limited to expenses for the services and items listed below:

- Over-the counter drugs and supplies (M432.1);
- Transportation (M432.2);
- Personal care services for recipients age 21 and older (M432.3)
- Assistive community care services provided to residents in a level III residential care home . . .
- Dental services in excess of the allowable annual maximum; and
- Private duty nursing services for recipients age 21 and older

M432

Each of these categories is further described in the regulations. Personal care services are specifically defined as follows:

Deductible personal care services include those personal care services described in M740.3 and assistance with managing money. They also include general supervision of physical and mental well-being where a physician states such care is required due to a specific diagnosis, such as Alzheimer's disease or dementia or like debilitating diseases or injuries. Room and board is not a personal care service.

M432.31

The personal care services described in regulation M740.3, referred to in the above regulation, include "limited housekeeping services essential to a recipient's comfort and health and incidental to the medical care of the recipient." M470.3.

The Department argues that the secretarial, housekeeping (recycling), lawn mowing and snow removal should not be deductible as a medical expenses because they are already included as part of the Community Maintenance Allowance (CMA). No definition is included in the regulations of the community maintenance allowance. However, the regulations above do specifically make housekeeping and money management services deductible as medically related expenses. If they were already included in the CMA, there would be no reason to list

them separately. It must be concluded, then, that any expenses the petitioner may have for these services are deductible separate and apart from the general maintenance allowance.¹ To the extent that the petitioner can document that he has paid for such services, they should be deductible from his income.

The other expenses presented by the petitioner--lawn mowing and snow removal--are not listed as medically related expenses in the above regulation. The petitioner has presented evidence that getting out of his home by wheelchair is a medical necessity for him. It may very well be that working and shopping independently confer a psychological benefit on the petitioner. The issue here, however, is whether the petitioner has already been provided money for those expenses as part of the community maintenance allowance.

As was mentioned above, the CMA is not defined in the Medicaid regulations. However, that concept is very similar to the "basic needs allowance" concept which is found in the Reach Up program. The Reach Up program describes the requirements that are "basic to all individuals" as food, clothing, personal incidentals, shelter, fuel utilities, chore

¹ Following the hearing, the petitioner indicated that he might not have these expenses at present. The petitioner needs to go over the

service and special needs. W.A.M. 2244. "Chore service" is defined as "snow removal, lawn maintenance, household cleaning supplies, etc." W.A.M. 2245.2. The RUFA program sets the basic amount without shelter for a one person household at \$447 per month. That amount includes \$29 per month for chore services. W.A.M. 2245.2. The maximum housing amount (outside of Chittenden County) is \$400 per month. W.A.M. 2245.3. When added together the maximum basic needs amount for one person is \$847 per month. That amount is very similar to the CMA of \$816 per month found in the Medicaid program.

While Medicaid is a different program from RUFA, the basic needs of individuals are essentially the same in any program. It must be concluded based on the Department's specific listing of snow plowing and lawn mowing as basic needs of all individuals in its other low-income program and its failure to list these items among "medical" deductions in the Medicaid program, that those items are already accounted for in the CMA deduction. To hold otherwise would be unfair to the many persons who have these "chores" included in their rent and who could not break them out as a separate medical deduction. As PATH is correct that it has already provided a deduction for these items in its community maintenance

documentation of these expenses with the Department on remand.

allowance, its decision not to deduct these items again must be upheld. As PATH's decision not to grant a deduction for housekeeping and money management expenses is incorrect, that part of its decision must be reversed and the matter remanded for a recalculation of the patient share based on the principles in this decision.

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